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APR 15 2004

OFFICE OF PETITIONS

In re Application of
Haischmann, Merzhauser, Stiller, and Reuther
Application No. 10/623,279
Filed: July 18, 2003
Attorney Docket No. 0090096
For: DEVICE FOR RINSING A BODY CAVITY

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: DECISION REFUSING STATUS
: UNDER 37 CFR 1.47(a)
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This is a decision on the petition under 37 CFR 1.47(a) filed February 23, 2004 (certificate of mailing dated February 18, 2004).

The petition under 37 CFR 1.47(a) is **dismissed**.

Any request for reconsideration under this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Failure to respond will result in the abandonment of this application. Any response should be titled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)".

The above-identified application was filed on July 18, 2003, without a proper oath or declaration or the filing fee. Accordingly, a "Notice to File Missing Parts of Nonprovisional Application" was mailed on November 18, 2003, requiring an executed oath or declaration and a surcharge for the late filing of the oath or declaration, and a filing fee. The instant petition and exhibits were filed on February 23, 2004, along with a request for an extension of time within the first month.

A grantable petition under 37 CFR 1.47(a) requires:

- (1) proof that the non-signing inventor(s) cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims, and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee,
- (4) a statement of the last known address of the non-signing inventor,

The instant petition lacks items (1) and (4) as set forth above.

As to item (4), the last known address for inventor Haischmann was not provided. Petitioner must provide the last known address for each non-signing inventor even if that address is probably not correct.

The Office must be able to make an attempt to inform the non-signing inventors that the application has been accorded status under 37 CFR 1.47.

As to item (1), it is noted that petitioner maintains that inventor Haischmann has refused to join the prosecution of the application, however; when such a refusal is alleged, petitioner must provide details regarding the same. Section 409.03(d) of the *Manual of Patent Examining Procedure* (MPEP) provides, in pertinent part, that:

[w]here a refusal of the inventor to sign the application papers is alleged, the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made. Statements made by a party not present when an oral refusal is made will not be accepted.

When it is concluded . . . that a non-signing inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in the statement of facts in support of the petition or directly in the petition. If there is documentary evidence to support facts alleged in the petition or in any statement of facts, such evidence should be submitted.

The declaration of Marc Engelhardt merely states that inventor Haischmann has refused to execute the declaration, but does not provide any details as to the alleged refusal as is required by Section 409.03(d) of the MPEP. Any renewed petition file must provide a first-hand account of inventor Haischmann's alleged refusal to join the prosecution of the application.

Please further note that an evidentiary documents originally written in German must be accompanied by an English translation of the same so that the undersigned can read it.

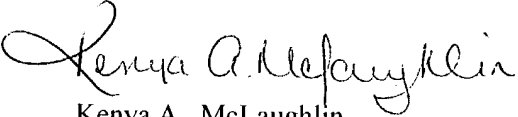
Deposit account 01-0484 will be charged \$130.00 for the instant petition fee.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
 Commissioner for Patents,
 PO Box 1450
 Alexandria, VA 22313-1450

By FAX: (703) 872-9306
 Attn: Office of Petitions

Telephone inquiries should be directed to the undersigned (703) 305-0010.


Kenya A. McLaughlin
Petitions Attorney
Office of Petitions